

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

WALTER WILLIAM SODERBERG,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

September 17, 2002

No. 237631

Kent Circuit Court

LC No. 00-005021-AR

Before: Whitbeck, C.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of reckless driving, MCL 257.626, and sentenced to ninety days in jail. Defendant appealed his conviction to the circuit court, which ordered a new trial after concluding that the district court improperly injected itself into the trial when it questioned defendant's expert witness. The prosecutor appeals the circuit court order by leave granted, arguing that the circuit court erred in concluding that the district court questioning of the witness was improper. Defendant cross-appeals, arguing that the district court erred in excluding its handwriting expert's testimony. We reverse the circuit court's order and remand this matter to the district court for reinstatement of defendant's conviction and sentence.

This case arises from a motor vehicle accident involving defendant and another driver, Gary Lierman. At trial, both parties agreed that the accident occurred as Lierman was attempting to pass defendant. However, while Lierman contended that defendant intentionally hit his car, defendant asserted that it was Lierman who struck defendant's vehicle when Lierman tried to move back into the right lane too soon. In support of his version of the events, defendant offered the testimony of an accident reconstruction expert, who opined that the accident occurred after Lierman's vehicle moved toward the right. During the expert's testimony, the trial court asked a series of questions regarding the basis for his conclusions. These questions constitute the basis for the ensuing appeals by the prosecutor.

The prosecutor argues that the circuit court erred in concluding that, in questioning defendant's expert witness, the district court improperly injected itself into the trial, thereby denying defendant a fair trial. We agree. Because defendant did not object to the district court's questions at trial, we review for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Although not unlimited, a trial court has wide discretion in matters concerning trial conduct. *People v Paquette*, 214 Mich App 336, 340; 542 NW2d 342 (1995). “The court may interrogate witnesses, whether called by itself or by a party.” MRE 614(b). However, in questioning a witness, the court’s actions must not pierce the veil of judicial impartiality. *People v Davis*, 216 Mich App 47, 50; 549 NW2d 1 (1996).

The court may question a witness to clarify testimony or elicit additional relevant information, but it must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair or partial. *Id.* The test is whether the court’s questions and comments might have unjustifiably aroused suspicion in the mind of the jury as to a witness’ credibility, and whether partiality possibly could have influenced the jury to the detriment of a party’s case. *Id.* at 50-51. Such statements should not, however, be taken out of context, but rather reviewed in light of the entire record. *Paquette, supra.*

Defendant asserts that the district court’s questioning was simply a continuation of prosecutor’s cross-examination. The district court first asked the witness whether he had seen defendant’s vehicle and if the vehicle’s large tires and increased height made a difference. We conclude that these questions were not partial, but simply elicited additional relevant information regarding what factors the witness took into account in reaching his conclusion.

Defendant also contends that the district court’s partial and sarcastic tone are apparent from the record. However, after reviewing the record, we conclude that the district court’s questions are not partial on their face, nor can any partiality be read into the record.

Furthermore, we believe that the district court’s questions were justified. At trial, counsel for defendant offered a lengthy and complex hypothetical in order to elicit the witness’ opinion, whose testimony was, at times, quite technical. The district court’s questions were only intended to clarify the witness’ opinion as compared to various accident scenarios to which other witnesses testified. The court did tend to repeat its questions, but due to the nature of the testimony, we cannot conclude that this occurred because the court was challenging the witness’ credibility.

Defendant also asserts that the district court further undercut the witness’ credibility, and directed the jury to believe Lierman’s testimony, during an exchange between the court and a juror. However, we conclude that the district court was not commenting on the witness’ credibility, but rather trying merely to determine which witness was best able to answer the juror’s question.

Last, defendant argues that the district court impermissibly injected itself during defendant’s direct examination of the witness when it interrupted defense counsel as he was setting up a hypothetical question. However, in order to elicit the witness’ opinion as to how the accident occurred, defense counsel’s hypothetical needed to mirror the facts of this case, and the district court interrupted because it did not believe that some of the facts posited by counsel accurately reflected the testimony.

Moreover, while perhaps unnecessary, we do not believe, as defendant contends, that the district court’s interruption “sent the message that [defense counsel] is either incapable of recalling what the facts are or is capable of playing fast and loose with the facts.” The district

court's comments were not disparaging to defendant, nor did the district court indicate to the jury that the court's recollection of the testimony was the version of events to be believed. In fact, that court apologized several times for interrupting, and repeatedly instructed the jury that it was its recollection of the facts that mattered. Accordingly, we conclude that no plain error occurred as a result of the district court's questions or comments.

On cross-appeal, defendant argues that the district court erred in excluding the testimony of defendant's handwriting expert. We disagree. The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

Presumably, the handwriting expert would have testified that a witness for the prosecutor wrote two advertisements that were posted on the bulletin board of a local Meijer indicating that defendant needed to sell his car because he was going to prison. On cross-examination, this witness denied writing the advertisements. The district court excluded the handwriting expert's testimony because it determined that the matter was collateral. However, the credibility of a witness is a material issue, and evidence that shows bias or prejudice of a witness is always relevant. *People v Mills*, 450 Mich 61, 72; 537 NW2d 909 (1995).

Nevertheless, specific instances of conduct of a witness, for the purpose of attacking credibility, may not be proven by extrinsic evidence. MRE 608(b). Therefore, the district court did not abuse its discretion in excluding the handwriting expert's testimony.

We reverse the circuit court's order and remand this matter to the district court for reinstatement of defendant's conviction and sentence. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Michael J. Talbot